

The complaint

Mrs H complains that MBNA Limited won't refund to her the money that she paid for some travel credits.

What happened

I issued a provisional decision on this complaint last month in which I described what had happened as follow:

"Mrs H and her partner entered into a credits purchase agreement with a timeshare trade-in in June 2014 to purchase 354,311 travel credits. They traded-in 7,000 holiday club membership points and agreed to pay a price of £8,930. Mrs H paid £1,000 of that amount using her MBNA credit card in June 2014 and £7,930 was paid by a bank transfer.

The supplier of the credits stopped trading in 2019 and Mrs H made a claim to MBNA under section 75 of the Consumer Credit Act 1974 in May 2023. She said that the statements made to her and her partner at the point of sale were false and unobtainable and the supplier had ceased trading so won't be able to fulfil the full performance of the contract and is in breach of contract.

MBNA said that Mrs H hadn't been able to provide evidence that there had been a breach of contract or misrepresentation and it said that it declined her complaint. Mrs H wasn't satisfied with its response so complained to this service.

Our investigator recommended that Mrs H's complaint should be upheld. She thought that the timing of Mrs H's misrepresentation claim gave MBNA a complete defence to it but she said that it appeared that the supplier had breached its contract with Mrs H and her partner as it was unable to perform the remainder of the contract. She recommended that MBNA should refund the full value of the contract, adding 8% interest for the time that she didn't have the money (which she said was from the date of sale).

MBNA has accepted the recommendation to refund the contract value of £8,930 to Mrs H but disagrees with the calculation of the 8% interest. It says that it believes the 8% interest should be paid from the date that the claim was rejected (as it has since conceded that its decision was made in error) and it's from this point that Mrs H may be deemed as being deprived of her money".

I said in my provisional decision: *"I consider that Mrs H's complaint should be upheld for these reasons:*

- Mrs H and her partner entered into the agreement in June 2014 and purchased 354,311 travel credits from the supplier – Mrs H used her MBNA credit card to pay £1,000 towards the price of £8,930 for the credits;*
- the supplier stopped trading in 2019 and Mrs H says that she and her partner hadn't used any of their credits but were told at the time of purchase that the credits had no*

time limit and would continue in force until they were used;

- *Mrs H made a claim to MBNA in May 2023 under section 75 because she said that the credits had been misrepresented to her and her partner and the supplier had breached the contract;*
- *section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);*
- *I'm not determining the outcome of Mrs H's claim under section 75 as only a court would be able to do that but I'm considering whether or not MBNA's response to her claim was fair and reasonable in the circumstances;*
- *MBNA said that Mrs H hadn't been able to provide evidence that there had been a breach of contract or misrepresentation and it said that it declined her complaint – but, in response to our investigator's recommendation that Mrs H's complaint should be upheld, it conceded that its decision was made in error and it has now agreed to refund the contract value of £8,930 to Mrs H;*
- *our investigator recommended that MBNA should refund the full value of the contract to Mrs H, adding 8% interest for the time that she didn't have the money (which she said was from the date of sale) but MBNA says that the 8% interest should be paid from the date that the claim was rejected;*
- *I consider that the supplier has breached the credits purchase agreement with a timeshare trade-in as it's stopped trading so is unable to provide the services to Mrs H and her partner and they haven't used any of the credits - so I agree that it would be fair and reasonable for MBNA to refund to Mrs H the price of £8,930 that was paid for the credits;*
- *I consider that interest should be added to that amount for the period from the date that the breach of contract occurred, as that's the date from which the holiday company's liability for the breach of contract would have started and from which Mrs H had an equal right to make a claim to MBNA under section 75;*
- *as I consider that there's been a breach of contract and that MBNA should pay £8,930 to refund to Mrs H the money that was paid for the travel credits, there's no need for me to consider Mrs H's claim that the travel credits were misrepresented to her and her partner; and*
- *I find that it would be fair and reasonable in these circumstances for MBNA to pay £8,930 to Mrs H to refund to her the amount that was paid for the travel credits and that it should pay interest on that amount from the date that the breach of contract occurred”.*

Subject to any further comments or evidence that I received from either Mrs H or MBNA, my provisional decision was that I intended to uphold this complaint. MBNA says that it agrees with the decision reached to award the 8% from the date of the breach (which it says was 1 July 2019 as that was when the supplier was put into liquidation) and Mrs H says that she's happy to accept the decision and has nothing further to add.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As both Mrs H and MBNA have accepted my provisional decision, there's no reason for me to change it.

Putting things right

I find that it would be fair and reasonable for MBNA to take the actions described in my provisional decision and as set out below.

My final decision

My decision is that I uphold this complaint and order MBNA Limited to:

1. Pay £8,930 to Mrs H to refund to her the amount that was paid for the travel credits.
2. Pay interest on that amount at an annual rate of 8% simple from the date that the breach of contract occurred to the date of settlement.

HM Revenue & Customs requires MBNA to deduct tax from the interest payment referred to above. MBNA must give Mrs H a certificate showing how much tax it's deducted if she asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 2 May 2024.

Jarrold Hastings
Ombudsman